

TEACHER EVALUATION AND TENURE

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INTRODUCTION

At beginning of twentieth century teachers received low pay, few benefits, and were often subject to arbitrary firing. It was not unusual for teachers to be dismissed with a change in local political leadership or if an administrator wanted to replace a teacher to provide a job to a friend or relative (Coleman, Schroth, Molinaro, & Green, 2005; Greenblatt, 2010; Hassel, Kowal, Ableidinger, & Hassel, 2011).

	Percentage of teachers in a teachers' union or association		
	1999-2000	2003-2004	2007-2008
Missouri	72.3	71.6	76.6
United States	79.1	77.6	76.4
Source: Schools and Staffing Survey, National Center for Education Statistics.			

Tenure was first introduced as an employee protection from unfair dismissal in the early 1900s (Altenbaug, 1992; Hess & Maranto, 2000; Newman, 2002).

However, tenure was not prevalent in public schools until the mid twentieth century (Hassel et al., 2011; Hess & Maranto, 2000). By the 1940s about 70 percent of teachers had job protections under tenure (McGuinn, 2010). Tenure preceded current labor laws that protect against discrimination or employer abuses (Greenblatt, 2010; Hassel et al., 2011).

Supporters of tenure see tenure as providing an insulation from politics, flexibility to consider new instructional methods, and continuity in personnel decisions in school districts. (Bridges & Groves, 1999; Newman, 2002). Tenure at the K-12 level is not a complete protection from dismissal, but it provides an assurance of due process (Greenblatt, 2010; Newman, 2002). While it is true that tenured teachers can be dismissed, dismissal of a tenured teacher happens very infrequently (Weisberg, Sexton, Mulhern, & Keeling, 2009). Finally, not all public schools have tenure options for teachers. Most charter schools do not offer tenure (Preston, Goldring, Berends, & Cannata, 2012).

TENURE IN OTHER PROFESSIONS

Few other professions have tenure or similar job protections. Higher education and civil service are the most common. Job protections are not necessarily called tenure in civil service, but the protections are very similar. In both higher education and civil service, tenure is a key offset to low salaries. The history of tenure in civil service was as a protection against cronyism (Goddard, 2008; Hassel et al., 2011).

In higher education, tenure is meant to protect faculty research pursuits from restrictions from administration. It allows faculty to explore new thinking and challenge conventional wisdom (Trachtenberg, 2008). Tenure in higher education is not easy to achieve and carries high prestige (Hassel et al., 2011; Youn & Price, 2009). Tenure in higher education is a rigorous and defined process reflecting a faculty member's achievements in research, scholarship, teaching,

and service. Higher education faculty move from assistant to associate professor when they earn tenure and must continue to achieve at a high level to move from associate professor to professor (Hassel et al., 2011).

While earning tenure in higher education is a very rigorous process, it is a very strong job protection, far more than the guaranteed due process required under K-12 teacher tenure. It is extremely rare for tenured university or college faculty to be dismissed (Trachtenberg, 2008). Not all faculty positions in higher education are eligible for tenure. Institutions are seeing more and more tenure-track positions being replaced by instructors and adjunct professors (Hassel et al., 2011).

In civil service, "tenure" is granted immediately following the probationary period. It is not so much earned as it is not denied (Hassel et al., 2011). State and federal civil service supervisors are encouraged to do rigorous evaluations during an employee's probationary period, but that does not guarantee that is the case in practice (Hassel et al., 2011). Additionally, it is becoming increasingly more common for civil service positions to convert to at-will positions (Condrey & Battaglio, 2007).

EVALUATION SYSTEMS AND PROFESSIONAL SUPPORT

The emphasis on accountability of schools has placed increased scrutiny on the performance of teachers (Painter, 2000). Stronger evaluation systems are badly needed if substantive changes are to be made to tenure. Improving teacher evaluations means more than identifying easier ways to dismiss teachers and includes support for beginning teachers and professional development for all teachers (Barnes, Crowe, & Schaefer, 2007; Coleman et al., 2005).

Improvements may include remediation opportunities for lower performing teachers. A shared understanding of the expectations for being evaluated as an effective teacher are crucial to the success of any evaluation system or reforms to tenure (Coleman et al., 2005). "Failure to improve evaluation makes

attempts to fiddle with tenure itself impotent and inadequate" (Coleman et al., 2005, p. 224). In one study more than 70 percent of teachers said their most recent evaluation did not include a professional development plan. The result is that teachers with acceptable but not exceptional performance have no guidance in improvement (Weisberg et al., 2009).

Policies on Teacher Evaluations		
	All States	Missouri
Formal evaluation required for all teachers	45	Yes
Teacher evaluation tied to student achievement	17	No
Teacher evaluation occurs on an annual basis	20	No
All evaluators receive formal training	29	No
Source: National Center for Education Statistics; <i>Quality Counts 2012: The Global Challenge</i> , Editorial Projects in Education Research Center, Education Week, 2012.		

When a teacher needs to be removed, administrators may be hesitant for a variety of reasons (Coleman et al., 2005). Tenure has functioned as a job guarantee for teachers because dismissal of a tenured teacher requires documented substandard evaluations, and most evaluation systems are too inadequate or too improperly used to be part of the dismissal process (Greenblatt, 2010). Principals cite lack of support from central administration and lack of proper training in how to be an effective evaluator as reasons for inaction (Painter, 2000). Nonetheless, effective evaluation is an essential component of the formal process to resolve issues with low-performing teachers whether that is through remediation or removal (Tucker, 1997).

EVALUATOR TRAINING

In one survey of public school principals in Oregon, all respondents said they had supervised at least one teacher who needed to be removed; however, respondents also thought that public perception of the number of low-performing teachers was higher than what they had experienced personally (Painter, 2000).

Principals identified teacher unions and collective bargaining agreements as a principal's greatest barrier to effectively dealing with low-performing teachers. The principals most often noted conflicts with the union representatives not the low-performing teachers themselves (Painter, 2000). Principals may have inaccurate perceptions of the actual contractual barriers inhibiting them from addressing low-performing teachers (Hess, 2013; Painter, 2000).

In the Oregon study, some principals were critical of colleagues who they said are afraid, do not want to take the time, or do not have sufficient time to address low-performing teachers. Other priorities interfere with a principal's ability to be a quality instructional leader and supervisor (Painter, 2000). Similar findings were reported by administrators surveyed for *The Widget Effect* study where 86 percent of administrators said they did not always initiate dismissal procedures even if it was warranted (Weisberg et al., 2009). Another 86 percent of administrators said they would spend more time on evaluations if evaluations were of more consequence (Weisberg et al., 2009).

Costs of teacher turnover are substantial. Turnover requires recruitment, hiring, and training replacements (Watlington, Shockley, Guglielmino, & Felsher, 2010). One report asserts an approximate cost per teacher of \$4,366 to \$17,872. Costs were attributable to things such as recruitment, administrative processing, and training for new hires (Barnes et al., 2007). The report suggested that administrators should be held accountable for the costs of excessive teacher turnover as motivation for improving evaluation efforts.

To improve evaluation systems, administrators will need to be trained and teachers will need professional development support and mentoring (Weisberg et al., 2009).

TENURE IN CURRENT PRACTICE

Tenure was designed to protect employees, but some argue the long-term consequence is a system that goes too far in protecting underperformers and makes dismissal an onerous process that administrators are reluctant to address (Anton, 1996). One technical issue with tenure is around the legal definition of the term *incompetence* (used in many policies and bargaining agreements) and whether that makes unsatisfactory performance more difficult to substantiate (Anton, 1996; Bridges & Groves, 1999). In addition, tenure is regarded as a property right, and property rights have constitutional implications including a guarantee of due process (Coleman et al., 2005).

A review of personnel actions in Los Angeles Unified School District reported that LAUSD dismissed approximately 21 of 30,000 teacher per year, less than 0.1 percent. Dismissals were most likely to occur over immoral or illegal behavior rather than ineffectiveness in the classroom (McGuinn, 2010). In the twelve districts in *The Widget Effect* study, 14 teachers of 15,000 had been dismissed for performance in the preceding five years (Weisberg et al., 2009).

According to *The Widget Effect*, in the Denver schools that did not make adequately yearly progress (AYP), 98 percent of tenured teachers received the highest rating. Only 10 percent of failing schools reported giving unsatisfactory ratings on evaluations to any of their teachers. Of the teachers surveyed, 43 percent said there is a tenured teacher in their building who should be dismissed for poor performance but has not been (Weisberg et al., 2009). In a study of principals in Virginia, principals said they would describe approximately 5 percent of the teachers they encounter as incompetent; however, the principals reported that less than 1 percent of tenured teachers identified as incompetent were remediated, reassigned, encouraged to resign, or recommended for dismissal (Tucker, 1997).

Since teachers' unions have been in existence, the struggle over defining teachers' unions as labor unions or professional organizations has been ongoing (Altenbaug, 1992). However, Painter (2000) noted a changing attitude in teacher union leadership to acceptance of transforming expectations in the profession.

CONCLUSION

The role of K-12 teacher tenure continues to be a key component in discussions on improving public education. Some would leave tenure in place as it currently exists to provide support and job protections. For those who would change K-12 teacher tenure, options range from developing a more rigorous process, thereby making tenure more prestigious to earn, to an outright removal of tenure and an implementation of at-will employment (Hassel et al., 2011).

Multi-year contracts or extended probationary periods provide compromised positions on tenure. (Anton, 1996; Coleman et al., 2005). Additionally, for currently tenured teachers a severance package could be an option for removing a tenured teacher if it was ultimately more

cost effective than due process procedures (Anton, 1996). Determining and implementing the best solutions has been a long and complex process. In 2000, Hess and Maranto forecast that reforming tenure would be a process that would take decades to reform just as it took decades to establish.

REFERENCES

- Altenbaug, R. J. (Ed.). (1992). *The teacher's voice: A social history of teaching in twentieth century America*. Bristol, PA: The Falmer Press.
- Anton, T. (1996). Modifying teacher tenure to regain public confidence. *Thrust for Educational Leadership*, 25(5), 34.
- Barnes, G., Crowe, E., & Schaefer, B. (2007). *The cost of teacher turnover in five school districts: A pilot study*. National Commission on Teaching and America's Future. Retrieved from <http://nctaf.org/teacher-turnover-cost-calculator/the-cost-of-teacher-turnover-study-and-cost-calculator/>
- Bridges, E. M., & Groves, B. R. (1999). The macro- and micro-politics of personnel evaluation: A framework. *Journal of Personnel Evaluation in Education*, 13(4), 321–337.
- Coleman, J., Schroth, S. T., Molinaro, L., & Green, M. (2005). Tenure: An important due process right or a hinderance to change in the schools? *Journal of Personnel Evaluation in Education*, 18, 219–231.
- Condrey, S. E., & Battaglio, R. P. (2007). A return to spoils? Revisiting radical civil service reform in the United States. *Public Administration Review*, 67(3), 425–436.
- Goddard, M. R. (2008). Woods v State Civil Service Commission: Assessing the standards of removal for civil service employees. *Widener Law Journal*, 17(2), 449–467.
- Greenblatt, A. (2010, April 29). Is teacher tenure still necessary? National Public Radio. Retrieved from <http://www.npr.org/templates/story/story.php?storyId=126349435>
- Hassel, E. A., Kowal, J., Ableidinger, J., & Hassel, B. C. (2011). *Teacher tenure reform: Applying lessons from the civil service and higher education*. Public Impact.
- Hess, F. M. (2013). *Cage-busting leadership*. Cambridge, MA: Harvard University Press.
- Hess, F. M., & Maranto, R. A. (2000). Tenure's tenuous tenure in public schools. *Education Digest*, 65(5), 51.
- McGuinn, P. (2010). *Ringin the bell for K-12 teacher tenure reform*. Washington, D. C.: Center for American Progress. Retrieved from <http://www.americanprogress.org/issues/education/report/2010/02/09/7314/ringing-the-bell-for-k-12-teacher-tenure-reform/>
- Newman, J. W. (2002). *America's teachers: An introduction to education* (4th ed.). Boston: Allyn and Bacon.
- Painter, S. R. (2000). Principals' perceptions of barriers to teacher dismissal. *Journal of Personnel Evaluation in Education*, 14(3), 253–264.
- Preston, C., Goldring, E., Berends, M., & Cannata, M. (2012). School innovation in district context: Comparing traditional public schools and charter schools. *Economics of Education Review*, 31(2), 318–330.
- Trachtenberg, S. J. (2008, October 24). Want tenure? Sign on the dotted line. *Chronicle of Higher Education*, pp. 29–29.
- Tucker, P. D. (1997). Lake Wobegon: Where all teachers are competent (or, have we come to terms with the problem of incompetent teachers?). *Journal of Personnel Evaluation in Education*, 11(2), 103–126.


- Watlington, E., Shockley, R., Guglielmino, P., & Felsher, R. (2010). The high cost of leaving: An analysis of the cost of teacher turnover. *Journal of Education Finance*, 36(1), 22–37.
- Weisberg, D., Sexton, S., Mulhern, J., & Keeling, D. (2009). *The widget effect: Our national failure to acknowledge and act on differences in teacher effectiveness*. The New Teacher Project.
- Youn, T. I. K., & Price, T. M. (2009). Learning from the Experience of Others: The Evolution of Faculty Tenure and Promotion Rules in Comprehensive Institutions. *Journal of Higher Education*, 80(2), 204–237.

Appendix A

School-Level Educator Evaluation Reports

Data on teacher evaluations is accessible at the school level through the DESE website. You may review data on any public school or charter school by using this link:

<http://mcids.dese.mo.gov/guidedinquiry/Pages/Education-Staff.aspx>

1. Under “District and Building Education Staff Indicators” select “Building Educator Evaluation.”
2. Select the district, school, and year and click “View Report.”
3. The report can be downloaded by clicking on this icon  and saved as a pdf, Excel file, Word document, etc.

The following page is an example of a Building Educator Evaluation report. In the example, the school has indicated that probationary teachers are given a rating of 1 to 4. Tenured teachers are given a rating of 1 to 3. The template shows places for scores of 1 to 7 because DESE allows schools to report data using scales with as many as seven categories. Each school reports its scoring scale under “Teacher Evaluation Description.” Whatever scale a school uses, they are asked to use “1” as the lowest rating.

Additional notes:

- Districts are not required to report the number or percentage of teachers in a district who have tenure.
- Districts are not required to report the number or percentage of teachers who do not have contracts renewed.
- Most schools will not have principal evaluation data available on DESE’s website because they have fewer than five principals. For confidentiality protection, any category of fewer than five employees is not reported on DESE’s website.

2013 Building Educator Evaluation Report

COLUMBIA 93 (010093)

School: ANN HAWKINS GENTRY MIDDLE (3000)

Used for:		
	Teacher	Principal
Development	Y	Y
Compensation	N	Y
Promotion	Y	Y
Retention	Y	Y
Removal	Y	Y

Used Student Data:		
	Teacher	Principal
Student Achievement Data:	Y	Y
Student Growth Data:	Y	Y
Evaluation data is publicly reported: N		

Teacher Evaluation Description: Probationary Teachers Rating System: 4 = Meeting Expectations; 3 = Developing Competence; 2 = Developing Competence with Areas for Improvement; 1 = Does Not Meet Expectations.
Tenure Teachers Rating System: 3 = Meeting Expectations; 2 = Meeting Expectations with Areas of Development; 1 = Does Not Meet Expectations.

Principal Evaluation Description: Data not available at this time.

	Teacher	
	Non-Tenured	Tenured
Score 1 -	0	*
Score 2 -	0	*
Score 3 -	5	*
Score 4 -	31	*
Score 5 -	0	*
Score 6 -	0	*
Score 7 -	0	*
Not Evaluated	32	*
Total	68	*

This report shows two columns: non-tenured and tenured, but since 2012 districts have not separated teachers into two categories. In this example, 68 is the total number of teachers in the school. In 2011 this school had 70 teachers: 23 non-tenured and 47 tenured. In 2011 none of the tenured teachers in the school were evaluated. Therefore, it is likely that of the 32 teachers who were not evaluated in 2013, most if not all were the tenured teachers in the school.

	Principal
Score 1 -	*
Score 2 -	*
Score 3 -	*
Score 4 -	*
Score 5 -	*
Score 6 -	*
Score 7 -	*
Not Evaluated	*
Total	*

* = Value is less than or equal to 5

Data as of: 8/16/2013
Report as of: 8/26/2013

Appendix B

States' Policies on Indefinite Contracts

State	Frequency that tenured teachers receive an evaluation rating	Minimum times a tenured teacher must be observed	Minimum years of experience required to be granted tenure	Can district choose to extend probationary period if administration undecided on tenure
Alabama	Once a year	2	3	No
Alaska	Frequency depends on previous evaluation rating	1	3	No
Arizona	Once a year	2	3	Yes, 4th-year teachers in 2 lowest performance classifications may be offered 1-year contracts.
Arkansas	Once every 3 years	1 (informal)	3	Yes, up to 1 additional year
California	Once every 2 years	No state policy	2	No
Colorado	Once a year	1	3	Yes, up to 1 additional year
Connecticut	Once a year	Rated below std or developing=3 formal observations; Rated proficient or exemplary= combo of 3 formal observations/reviews of practice.	4	No
Delaware	Once a year	2 (1 announced; 1 unannounced)	3	No
Florida	Once a year	1	Annual contracts only	Annual contracts only
Georgia	Once a year	multiple observations	3	No

Hawaii	Once a year	1	2	No
Idaho	Once a year	2	3	No
Illinois	Once a year	No state policy	4 (3 if rated excellent all years)	No
Indiana	Once a year	2	3	No
Iowa		1	3	No
Kansas	Once every 3 years	1; best practice: multiple observations	3	No
Kentucky	Once every 3 years	Multiple if previous observation results are unsatisfactory.	4	No
Louisiana	Once a year	2 (1 formal, 1 informal)	5	
Maine	Frequency depends on previous evaluation rating	1	3	Yes, up to 2 additional years with superintendent's recommendation
Maryland	3-year cycle: Yr1=professional practice and student growth; Yrs 2&3: if highly effective/effective, then previous professional practice rating + most recent growth data; if ineffective, then annual evaluations on both	2	3	No
Massachusetts	Frequency depends on previous evaluation rating	1	3	no
Michigan	Frequency depends on previous evaluation rating	Multiple observations required unless teacher received effective or highly effective rating on 2 most recent annual evaluations.	5	No

Minnesota	Summative evaluation 1X/3 years; peer review in off years	1 every 3 years	3	No
Mississippi		2 formal; 5 walk- throughs	1	No
Missouri	Must be "ongoing and of sufficient specificity and frequency to provide for demonstrated standards of competency and academic ability."	No state policy	5	Yes, up to 6 months
Montana	No state policy	No state policy	3	No
Nebraska	No state policy	No state policy	3	Yes, up to 2 additional years
Nevada		Rated minimally effective or ineffective=3; effective= 2; highly effective=1	3	No
New Hampshire	No state policy	No state policy	5	No
New Jersey	Once a year	Multiple	4	No
New Mexico	Once a year	4	3	No
New York	Once a year	Multiple	3	No
North Carolina	Once a year	1 formal, 2 informal		Annual contracts only
North Dakota	Once a year	No state policy	2	No
Ohio	Frequency depends on previous evaluation rating	2	5	Yes, up to 2 additional years with superintendent's recommendation
Oklahoma	Once a year	1	3	Yes - depends on eval rating
Oregon	Once every 2 years	No state policy	3	No

Pennsylvania	Once a year	Unclear	3	No
Rhode Island	Once a year	3	Annual contracts only	Annual contracts only
South Carolina	At the district's discretion	No state policy	2	Yes, up to 2 additional years
South Dakota	Once every 2 years	No state policy	3	No state policy
Tennessee	Once a year	4	5	No
Texas	Frequency depends on previous evaluation rating	1	3	Yes, up to 1 additional year
Utah	Once a year	"A reasonable number to ensure reliability"	3	Yes, up to 2 additional years
Vermont	No state policy	No state policy	2	No
Virginia		No state policy		Yes
Washington	Frequency depends on previous evaluation rating	2	3	Yes, if evaluation rating is below level 2
West Virginia	4-5th-year teachers=Once a year. 6th-year+ teachers (w/o unsatisfactory rating)= once every 3 years unless supervisor deems it necessary.	4th-5th year teachers=2	3	No
Wisconsin		2 formal; 3-5 walkthroughs per observation cycle	3	No
Wyoming	Once a year	No state policy	3	No

Source: National Council on Teacher Quality.

Appendix C

Missouri Statutes on Indefinite Contracts

168.101	Employment of certificated teachers ineligible for permanent status under the teacher tenure act (all districts except metropolitan).
168.102	Short title. "Teacher Tenure Act."
168.104	Definitions
168.106	Indefinite contracts, what affects.
168.108	Contract, form of—requirements.
168.110	Contract modification, when—what provisions.
168.112	Modification or termination, how.
168.114	Board may terminate, grounds for.
168.116	Termination by board—notice—charges.
168.118	Termination hearing, procedure, costs.
168.120	Appeal by teacher, procedure.
168.122	Leaves of absence, board may establish policy—retention of permanent status
168.124	Board may place on leave—provisions governing—salary to be paid to affected teacher, when.
168.126	Probationary teachers, how terminated—notice, contents—reemployed, how.
168.128	Teacher records, how maintained—evaluations, how performed and maintained.
168.221	Probationary period for teachers--removal of probationary and permanent personnel--hearing--demotions--reduction of personnel (metropolitan districts).
168.232	Consequences of dissolution of St. Louis special school district.
168.271	Probationary period for employees—discharge during (metropolitan districts).
168.281	Permanent employees, removal, procedure—suspension, demotion—reduction of personnel (metropolitan districts).

Missouri Revised Statutes

Chapter 168

Personnel--Teachers and Others

Section 168.101. Employment of certificated teachers ineligible for permanent status under the teacher tenure act (all districts except metropolitan).

168.101. 1. In addition to the employment of teachers as provided in section 168.104, the school board or board of directors of a school district, except a metropolitan school district, may, at any regular or special meeting, contract and employ legally certificated teachers not employed as superintendent of the district and not eligible under section 168.104 to gain permanent status or tenure in the position held within the school system. The contract shall be made by the order of the board, shall specify the number of months the employee is to work and the wages per month to be paid, shall be signed by the employee and the president of the board, or a facsimile signature of the president may be affixed at his direction, and the contract shall be attested by the secretary of the board by signature or facsimile.

2. After the original employment of a certificated employee not employed as superintendent of the district under this section, his employment shall continue in the same staff position from year to year subject to the regulations hereinafter set forth.

3. Each school board having one or more certificated employees as described in subsection 1 of this section under contract shall notify each such certificated employee in writing concerning his reemployment in his present staff position or lack thereof on or before the fifteenth day of April of the year in which the contract then in force expires. Failure on the part of a board to give the notice constitutes reemployment on the same terms and in the same staff position as those provided in the contract of the current fiscal year; and not later than the fifteenth day of May of the same year the board shall present a contract to each such certificated employee notified of reemployment by the district.

4. Any motion regarding reemployment of such certificated employee shall include only one person and a motion to reemploy shall be made in the positive sense and a majority of the elected members voting in the affirmative shall constitute reemployment.

5. Any such certificated employee not employed as superintendent of the district who receives a contract shall within fifteen days thereafter present to the employing board a written

acceptance or rejection of the employment tendered and his failure to present the acceptance within such time constitutes a rejection of the board's offer.

6. If such certificated employee has been reemployed five times within the district, the school board, if requested in writing by such certificated employee within ten days after receipt of notice of demotion or lack of reemployment on the same terms and in the same staff position, shall make available in writing a statement of reasons for demotion or lack of reemployment within ten days after receipt of the request. The board shall grant such certificated employee a hearing if requested in writing by him within ten days after the receipt of statement of reasons, the hearing to be held within ten days after the request therefor, and to be open at the request of the certificated employee. The certificated employee may have counsel at the hearing, may testify and offer testimony of witnesses as well as other evidence sustaining his defense and may cross-examine adverse witnesses.

7. A contract between the board of education and such certificated employee may be terminated at any time by mutual consent of the certificated employee and the board.

8. This section shall not affect the employment or reemployment of the superintendent of schools by a board of education.

(L. 1973 H.B. 151 § 1, A.L. 1990 S.B. 740, A.L. 1992 S.B. 470 & 497)

Section 168.102. Short title.

168.102. Sections 168.102 to 168.130 shall be known and may be cited as the "Teacher Tenure Act" and shall become effective July 1, 1970.

(L. 1969 p. 275 § 168.101)

CROSS REFERENCES:

Suspension or termination of contracts of certificated staff and administrators, academically deficient schools, when, procedure, 160.540

Section 168.104. Definitions.

168.104. The following words and phrases when used in sections 168.102 to 168.130, except in those instances where the context indicates otherwise, mean:

(1) "Board of education", the school board or board of directors of a school district, except a metropolitan school district, having general control of the affairs of the district;

(2) "Demotion", any reduction in salary or transfer to a position carrying a lower salary, except on request of a teacher, other than any change in salary applicable to all teachers or all teachers in a classification;

(3) "Indefinite contract", every contract heretofore or hereafter entered into between a school district and a permanent teacher;

(4) "Permanent teacher", any teacher who has been employed or who is hereafter employed as a teacher in the same school district for five successive years and who has continued or who thereafter continues to be employed as a teacher by the school district or any supervisor of teachers who was employed as a teacher in the same school district for at least five successive years prior to becoming a supervisor of teachers and who continues thereafter to be employed as a certificated employee by the school district; except that, when a permanent teacher resigns or is permanently separated from employment by a school district, and is afterwards reemployed by the same school district, reemployment for the first school year does not constitute an indefinite contract but if he is employed for the succeeding year, the employment constitutes an indefinite contract; and except that any teacher employed under a part-time contract by a school district shall accrue credit toward permanent status on a prorated basis. Any permanent teacher who is promoted with his consent to a supervisory position including principal or assistant principal, or is first employed by a district in a supervisory position including principal or assistant principal, shall not have permanent status in such position but shall retain tenure in the position previously held within the district, or, after serving two years as principal or assistant principal, shall have tenure as a permanent teacher of that system;

(5) "Probationary teacher", any teacher as herein defined who has been employed in the same school district for five successive years or less. In the case of any probationary teacher who has been employed in any other school system as a teacher for two or more years, the board of education shall waive one year of his probationary period;

(6) "School district", every school district in this state, except metropolitan school district as defined in section 162.571;

(7) "Teacher", any employee of a school district, except a metropolitan school district, regularly required to be certified under laws relating to the certification of teachers, except superintendents and assistant superintendents but including certified teachers who teach at the prekindergarten level in a nonmetropolitan public school within a prekindergarten program in which no fees are charged to parents or guardians.

(L. 1969 p. 275 § 168.102, A.L. 1983 H.B. 815, A.L. 1990 S.B. 740, A.L. 2004 S.B. 968 and S.B. 969, A.L. 2005 H.B. 297 merged with S.B. 266)

CROSS REFERENCE:

Sexual contact with a student while on public school property, crime of, penalty, 566.086

Section 168.106. Indefinite contract, what affects.

168.106. The contract between a school district and a permanent teacher shall be known as an indefinite contract and shall continue in effect for an indefinite period, subject only to:

- (1) Compulsory or optional retirement when the teacher reaches the age of retirement provided by law, or regulation established by the local board of education;
- (2) Modification by a succeeding indefinite contract or contracts in the manner hereinafter provided;
- (3) The death of the teacher;
- (4) Resignation of the teacher with the written consent of the school board;
- (5) Termination by the board of education after a hearing as hereinafter provided; and
- (6) The revocation of the teacher's certificate.

(L. 1969 p. 275 § 168.103)

Section 168.108. Contract, form of--requirements.

168.108. 1. Every indefinite contract shall contain the following provisions in substantially the following form:

"It is hereby agreed by and between, the teacher, and the Board of Education of School District, the employer, that the teacher, beginning on the day of, 20..., shall serve in the employ of the Board of Education and its successors for a term of months (the number of school months of the school year in the school district) for an annual compensation of \$, to be paid to the teacher in equal installments according to local school board regulations less the contributions required by law."

"It is further agreed by the parties hereto that this contract shall continue in force from year to year, until modified or terminated in accordance with the provisions of sections 168.102 to 168.130, RSMo, and any amendments thereto prior to the date of this contract."

2. Every indefinite contract shall be made by the order of the board of education, shall be in writing and shall be signed by the permanent teacher and the president of the board of education, or a facsimile signature of the president may be affixed at his direction, and the contract shall be attested by the secretary of the board of education by signature or facsimile.

(L. 1969 p. 275 § 168.104, A.L. 1992 S.B. 470 & 497)

Section 168.110. Contract modification, when--what provisions.

168.110. The board of education of a school district may modify an indefinite contract annually on or before the fifteenth day of May in the following particulars:

- (1) Determination of the date of beginning and length of the next school year;
- (2) Fixing the amount of annual compensation for the following school year as provided by the salary schedule adopted by the board of education applicable to all teachers. The modifications shall be effective at the beginning of the next school year. All teachers affected by the modification shall be furnished written copies of the modifications within thirty days after their adoption by the board of education.

(L. 1969 p. 275 § 168.105, A.L. 1990 S.B. 740)

Section 168.112. Modification or termination, how.

168.112. An indefinite contract between a permanent teacher and a board of education may be terminated or modified at any time by the mutual consent of the parties thereto. Any teacher who desires to terminate his contract at the end of a school term shall give written notice of his intention to do so and the reasons therefor not later than June first of the year in which the term ends.

(L. 1969 p. 275 § 168.106, A.L. 1990 S.B. 740)

Section 168.114. Board may terminate, grounds for.

168.114. 1. An indefinite contract with a permanent teacher shall not be terminated by the board of education of a school district except for one or more of the following causes:

- (1) Physical or mental condition unfitting him to instruct or associate with children;
- (2) Immoral conduct;
- (3) Incompetency, inefficiency or insubordination in line of duty;

(4) Willful or persistent violation of, or failure to obey, the school laws of the state or the published regulations of the board of education of the school district employing him;

(5) Excessive or unreasonable absence from performance of duties; or

(6) Conviction of a felony or a crime involving moral turpitude.

2. In determining the professional competency of or efficiency of* a permanent teacher, consideration should be given to regular and special evaluation reports prepared in accordance with the policy of the employing school district and to any written standards of performance which may have been adopted by the school board.

(L. 1969 p. 275 § 168.107)

*Word "of" omitted in original rolls.

CROSS REFERENCE:

Suspension or termination of contracts of certificated staff and administrators, academically deficient schools, when, procedure, 160.540

Section 168.116. Termination by board--notice--charges.

168.116. 1. The indefinite contract of a permanent teacher may not be terminated by the board of education until after service upon the teacher of written charges specifying with particularity the grounds alleged to exist for termination of such contract, notice of a hearing on charges and a hearing by the board of education on charges if requested by the teacher.

2. At least thirty days before service of notice of charges of incompetency, inefficiency, or insubordination in line of duty, the teacher shall be given by the school board or the superintendent of schools warning in writing, stating specifically the causes which, if not removed, may result in charges. Thereafter, both the superintendent, or his designated representative, and the teacher shall meet and confer in an effort to resolve the matter.

3. Notice of a hearing upon charges, together with a copy of charges, shall be served on the permanent teacher at least twenty days prior to the date of the hearing. The notice and copy of the charges may be served upon the teacher by certified mail with personal delivery addressed to him at his last known address. If the teacher or his agent does not within ten days after receipt of the notice request a hearing on the charges, the board of education may, by a majority vote, order the contract of the teacher terminated. If a hearing is requested by either the teacher or the board of education, it shall take place not less than twenty nor more than thirty days after notice of a hearing has been furnished the permanent teacher.

4. On the filing of charges in accordance with this section, the board of education may suspend the teacher from active performance of duty until a decision is rendered by the board of education but the teacher's salary shall be continued during such suspension. If a decision to terminate a teacher's employment by the board of education is appealed, and the decision is reversed, the teacher shall be paid his salary lost during the pending of the appeal.

(L. 1969 p. 275 § 168.108)

Section 168.118. Termination hearing, procedure, costs.

168.118. If a hearing is requested on the termination of an indefinite contract it shall be conducted by the board of education in accordance with the following provisions:

- (1) The hearing shall be public;
- (2) Both the teacher and the person filing charges may be represented by counsel who may cross-examine witnesses;
- (3) Testimony at hearings shall be on oath or affirmation administered by the president of the board of education, who for the purpose of hearings held under sections 168.102 to 168.130 shall have the authority to administer oaths;
- (4) The school board shall have the power to subpoena witnesses and documentary evidence as provided in section 536.077 and shall do so on its own motion or at the request of the teacher against whom charges have been made. The school board shall hear testimony of all witnesses named by the teacher; however, the school board may limit the number of witnesses to be subpoenaed on behalf of the teacher to not more than ten;
- (5) The board of education shall employ a stenographer who shall make a full record of the proceedings of the hearings and who shall, within ten days after the conclusion thereof, furnish the board of education and the teacher, at no cost to the teacher, with a copy of the transcript of the record, which shall be certified by the stenographer to be complete and correct. The transcript shall not be open to public inspection, unless the hearing on the termination of the contract was an open hearing or if an appeal from the decision of the board is taken by the teacher;
- (6) All costs of the hearing shall be paid by the school board except the cost of counsel for the teacher;

(7) The decision of the board of education resulting in the demotion of a permanent teacher or the termination of an indefinite contract shall be by a majority vote of the members of the board of education and the decision shall be made within seven days after the transcript is furnished them. A written copy of the decision shall be furnished the teacher within three days thereafter.

(L. 1969 p. 275 § 168.109)

Section 168.120. Appeal by teacher, procedure.

168.120. 1. The teacher shall have the right to appeal from the decision of the board of education to the circuit court of the county where the employing school district is located. The appeal shall be taken within fifteen days after service of a copy of the decision of the board of education upon the teacher, and if an appeal is not taken within the time, then the decision of the board of education shall become final.

2. The appeal may be taken by filing notice of appeal with the board of education, whereupon the board of education, under its certificate, shall forward to the court all documents and papers on file in the matter, together with a transcript of the evidence, the findings and the decision of the board of education, which shall thereupon become the record of the cause. Such appeal shall be heard as provided in chapter 536.

3. Appeals from the circuit court shall be allowed in the same manner as in civil actions, except that the original transcript prepared and filed in the circuit court by the board of education, together with a transcript of the proceedings had in the circuit court, shall constitute the transcript on appeal in the appellate court. The board of education shall make available, to the parties, copies of any transcript prepared and filed by it in the circuit court and upon final determination of the cause in the appellate court the original record of the board of education filed as a part of the transcript on appeal shall be certified back to the board of education by the appellate court. In all appeals from the board of education or circuit court the costs thereof shall be assessed against the losing party as provided by law in civil cases. All appeals to the circuit court and appellate courts shall have precedence over all cases except election contests.

4. If the circuit court finds for the teacher, he shall be restored to permanent teacher status and shall receive compensation for the period during which he may have been suspended from work, and such other relief as may be granted by the court.

(L. 1969 p. 275 § 168.110)

Section 168.122. Leaves of absence, board may establish policy--retention of permanent status.

168.122. A board of education may establish policies for granting leave of absence including sabbatical leave, maternity leave, sick leave, and military leave. The board of education of a school district may, upon the written request of a teacher, and for good cause shown, grant a leave of absence or place him on a part-time teaching schedule for a period of one year, subject to renewal from year to year. Leaves and military service shall not be counted as continuous full-time service in computing tenure but shall not impair the tenure previously acquired by teacher under sections 168.102 to 168.130 nor affect any credit toward tenure previously earned. Any teacher under sections 168.102 to 168.130 who is called into active military service with the Armed Forces of the United States is eligible for reinstatement upon his discharge from said service without loss of tenure. Any permanent teacher employed on a part-time basis, whether at his request or not, shall retain permanent status. Any probationary teacher employed on a part-time basis, whether at his request or not, shall retain all credit earned toward permanent status and shall continue to earn credit on a pro rata basis toward permanent status.

(L. 1969 p. 275 § 168.111, A.L. 1990 S.B. 740)

Section 168.124. Board may place on leave--provisions governing--salary to be paid to affected teacher, when.

168.124. 1. The board of education of a school district may place on leave of absence as many teachers as may be necessary because of a decrease in pupil enrollment, school district reorganization or the financial condition of the school district. In placing teachers on leave, the board of education shall be governed by the following provisions:

- (1) No permanent teacher shall be placed on leave of absence while probationary teachers are retained in positions for which a permanent teacher is qualified;
- (2) Permanent teachers shall be retained on the basis of performance-based evaluations and seniority (however, seniority shall not be controlling) within the field of specialization;
- (3) Permanent teachers shall be reinstated to the positions from which they have been given leaves of absence, or if not available, to positions requiring like training and experience, or to other positions in the school system for which they are qualified by training and experience;
- (4) No appointment of new teachers shall be made while there are available teachers on unrequested leave of absence who are properly qualified to fill such vacancies;

(5) A teacher placed on leave of absence may engage in teaching or another occupation during the period of such leave;

(6) The leave of absence shall not impair the tenure of a teacher;

(7) The leave of absence shall continue for a period of not more than three years unless extended by the board.

2. Should a board of education choose to utilize the mechanism for reducing teacher forces as provided in subsection 1 of this section in an attempt to manage adverse financial conditions caused at least partially by a withholding of, or a decrease or less than expected increase in, education appropriations, then the district additionally shall follow the provisions of subsection 3 of this section.

3. If a school district has an unrestricted combined ending fund balance of more than ten percent of current expenditures in its teachers' and incidental funds, and in the subsequent fiscal year such district, because of state appropriations, places a contracted teacher on leave of absence after forty days subsequent to the governor signing the elementary and secondary education appropriation bill, the district shall pay the affected teacher the greater of his or her salary for any days worked under the contract, or a sum equal to three thousand dollars.

(L. 1969 p. 275 § 168.112, A.L. 1983 H.B. 38 & 783, A.L. 1984 H.B. 1456 & 1197, A.L. 1993 S.B. 49, A.L. 2004 S.B. 968 and S.B. 969)

Section 168.126. Probationary teachers, how terminated--notice, contents--reemployed, how.

168.126. 1. A board of education at a regular or special meeting may contract with and employ by a majority vote legally qualified probationary teachers for the school district. The contract shall be made by order of the board; shall specify the number of months school is to be taught and the wages per month to be paid; shall be signed by the probationary teacher and the president of the board, or a facsimile signature of the president may be affixed at his discretion; and the contract shall be attested by the secretary of the board by signature or facsimile. The board shall not employ one of its members as a teacher; nor shall any person be employed as a teacher who is related within the fourth degree to any board member, either by consanguinity or affinity, where the vote of the board member is necessary to the selection of the person.

2. If in the opinion of the board of education any probationary teacher has been doing unsatisfactory work, the board of education, through its authorized administrative representative, shall provide the teacher with a written statement definitely setting forth his

alleged incompetency and specifying the nature thereof, in order to furnish the teacher an opportunity to correct his fault and overcome his incompetency. If improvement satisfactory to the board of education has not been made within ninety days of the receipt of the notification, the board of education may terminate the employment of the probationary teacher immediately or at the end of the school year. Any motion to terminate the employment of a probationary teacher shall include only one person and must be approved by a majority of the members of the board of education. A tie vote thereon constitutes termination. On or before the fifteenth day of April in each school year, the board of education shall notify in writing a probationary teacher who will not be retained by the school district of the termination of his employment. Upon request, the notice shall contain a concise statement of the reason or reasons the employment of the probationary teacher is being terminated. If the reason for the termination is due to a decrease in pupil enrollment, school district reorganization, or the financial condition of the school district, then the district shall in all cases issue notice to the teacher expressly declaring such as the reason for such termination. Nothing contained in this section shall give rise to a cause of action not currently cognizant at law by a probationary teacher for any reason given in said writing so long as the board issues the letter in good faith without malice, but an action for actual damages may be maintained by any person for the deprivation of a right conferred by this act.

3. Any probationary teacher who is not notified of the termination of his employment shall be deemed to have been appointed for the next school year, under the terms of the contract for the preceding year. A probationary teacher who is informed of reemployment by written notice shall be tendered a contract on or before the fifteenth day of May, and shall within fifteen days thereafter present to the employing board of education a written acceptance or rejection of the employment tendered, and failure of such teachers to present the acceptance within such time constitutes a rejection of the board's offer. A contract between a probationary teacher and a board of education may be terminated or modified at any time by the mutual consent of the parties thereto.

(L. 1969 p. 275 § 168.113, A.L. 1983 H.B. 38 & 783, A.L. 1990 S.B. 740, A.L. 1992 S.B. 470 & 497, A.L. 2004 S.B. 968 and S.B. 969)

Section 168.128. Teacher records, how maintained--evaluations, how performed and maintained.

168.128. The board of education of each school district shall maintain records showing periods of service, dates of appointment, and other necessary information for the enforcement of sections 168.102 to 168.130. In addition, the board of education of each school district shall cause a comprehensive, performance-based evaluation for each teacher employed by the district. Such evaluations shall be ongoing and of sufficient specificity and frequency to provide

for demonstrated standards of competency and academic ability. All evaluations shall be maintained in the teacher's personnel file at the office of the board of education. A copy of each evaluation shall be provided to the teacher and appropriate administrator. The state department of elementary and secondary education shall provide suggested procedures for such an evaluation.

(L. 1969 p. 275 § 168.114, A.L. 1983 H.B. 38 & 783)

Section 168.221. Probationary period for teachers--removal of probationary and permanent personnel--hearing--demotions--reduction of personnel (metropolitan districts).¹

168.221. 1. The first five years of employment of all teachers entering the employment of the metropolitan school district shall be deemed a period of probation during which period all appointments of teachers shall expire at the end of each school year. During the probationary period any probationary teacher whose work is unsatisfactory shall be furnished by the superintendent of schools with a written statement setting forth the nature of his or her incompetency. If improvement satisfactory to the superintendent is not made within one semester after the receipt of the statement, the probationary teacher shall be dismissed. The semester granted the probationary teacher in which to improve shall not in any case be a means of prolonging the probationary period beyond five years and six months from the date on which the teacher entered the employ of the board of education. The superintendent of schools on or before the fifteenth day of April in each year shall notify probationary teachers who will not be retained by the school district of the termination of their services. Any probationary teacher who is not so notified shall be deemed to have been appointed for the next school year. Any principal who prior to becoming a principal had attained permanent employee status as a teacher shall upon ceasing to be a principal have a right to resume his or her permanent teacher position with the time served as a principal being treated as if such time had been served as a teacher for the purpose of calculating seniority and pay scale. The rights and duties and remuneration of a teacher who was formerly a principal shall be the same as any other teacher with the same level of qualifications and time of service.

2. After completion of satisfactory probationary services, appointments of teachers shall become permanent, subject to removal for any one or more causes herein described and to the right of the board to terminate the services of all who attain the age of compulsory retirement fixed by the retirement system. In determining the duration of the probationary period of employment in this section specified, the time of service rendered as a substitute teacher shall not be included.

¹ Updated to reflect changes made by SB 125 (2013) and effective August 28, 2013.

3. No teacher whose appointment has become permanent may be removed except for one or more of the following causes: immorality, incompetency, or inefficiency in line of duty, violation of the published regulations of the school district, violation of the laws of Missouri governing the public schools of the state, or physical or mental condition which incapacitates him for instructing or associating with children, and then only by a vote of not less than a majority of all the members of the board, upon written charges presented by the superintendent of schools, to be heard by the board after thirty days' notice, with copy of the charges served upon the person against whom they are preferred, who shall have the privilege of being present at the hearing, together with counsel, offering evidence and making defense thereto. At the request of any person so charged the hearing shall be public. During any time in which powers granted to the district's board of education are vested in a special administrative board, the special administrative board may appoint a hearing officer to conduct the hearing. The hearing officer shall conduct the hearing as a contested case under chapter 536 and shall issue a written recommendation to the board rendering the charges against the teacher. The board shall render a decision on the charges upon the review of the hearing officer's recommendations and the record from the hearing. The action and decision of the board upon the charges shall be final. Pending the hearing of the charges, the person charged may be suspended if the rules of the board so prescribe, but in the event the board does not by a majority vote of all the members remove the teacher upon charges presented by the superintendent, the person shall not suffer any loss of salary by reason of the suspension. Incompetency or inefficiency in line of duty is cause for dismissal only after the teacher has been notified in writing at least thirty days prior to the presentment of charges against him by the superintendent. The notification shall specify the nature of the incompetency or inefficiency with such particularity as to enable the teacher to be informed of the nature of his or her incompetency or inefficiency.

4. No teacher whose appointment has become permanent shall be demoted nor shall his or her salary be reduced unless the same procedure is followed as herein stated for the removal of the teacher because of inefficiency in line of duty, and any teacher whose salary is reduced or who is demoted may waive the presentment of charges against him by the superintendent and a hearing thereon by the board. The foregoing provision shall apply only to permanent teachers prior to the compulsory retirement age under the retirement system. Nothing herein contained shall in any way restrict or limit the power of the board of education to make reductions in the number of teachers or principals, or both, because of insufficient funds, decrease in pupil enrollment, or abolition of particular subjects or courses of instruction, except that the abolition of particular subjects or courses of instruction shall not cause those teachers who have been teaching the subjects or giving the courses of instruction to be placed on leave of absence as herein provided who are qualified to teach other subjects or courses of instruction, if positions are available for the teachers in the other subjects or courses of instruction.

5. Whenever it is necessary to decrease the number of teachers because of insufficient funds or a substantial decrease of pupil population within the school district, the board of education upon recommendation of the superintendent of schools may cause the necessary number of teachers beginning with those serving probationary periods to be placed on leave of absence without pay, but only in the inverse order of their appointment. Nothing herein stated shall prevent a readjustment by the board of education of existing salary schedules. No teacher placed on a leave of absence shall be precluded from securing other employment during the period of the leave of absence. Each teacher placed on leave of absence shall be reinstated in inverse order of his or her placement on leave of absence. Such reemployment shall not result in a loss of status or credit for previous years of service. No appointment of new teachers shall be made while there are available teachers on unrequested leave of absence who are properly qualified to fill such vacancies. Such leave of absence shall not impair the tenure of a teacher. The leave of absence shall continue for a period of not more than three years unless extended by the board.

6. If any regulation which deals with the promotion of teachers is amended by increasing the qualifications necessary to be met before a teacher is eligible for promotion, the amendment shall fix an effective date which shall allow a reasonable length of time within which teachers may become qualified for promotion under the regulations.

7. A teacher whose appointment has become permanent may give up the right to a permanent appointment to participate in the teacher choice compensation package under sections 168.745 to 168.750.

8. Should the state mandate that professional development for teachers be provided in local school districts and any funds be utilized for such, a metropolitan school district shall be allowed to utilize a professional development plan for teachers which is known within the administration as the "St. Louis Plan," should the district and the teacher decide jointly to participate in such plan.

(L. 1963 p. 200 § 9-22, A.L. 1967 p. 238, A.L. 1998 H.B. 1469 merged with S.B. 781, A.L. 2005 H.B. 297 merged with S.B. 299, A.L. 2009 S.B. 291, A.L. 2010 H.B. 1543)

(Source: RSMo 1959 § 165.590)

(2000) Certified school guidance counselor has no right to a hearing pursuant to this section. Cross v. Hammonds, 223 F.3d 867 (8th Cir.).

Section 168.232. Consequences of dissolution of St. Louis special school district.

168.232. 1. If the responsibility for teaching all or any group of students in a special school district located in a county of the first classification with a charter form of government and population of at least nine hundred thousand inhabitants is transferred or removed to one or

more separate school districts by vote of the citizens, dissolution, annexation, court action, or any other authority under Missouri or federal laws, the latter school district or districts shall become the receiving or successor school district or districts.

2. The successor school district or districts shall honor the provisions of all teachers' contracts of teachers of the sending or prior school district who are employed by the successor school district pertaining to the tenure status or years of credit toward tenure or both of said teachers and their salary position on the salary schedule and fringe benefits.

3. This section shall only apply to the transfer of an* academic, special education, vocational education or technical education program or athletic program from one school district identified in subsection 1 of this section to one or more separate school districts.

4. Nothing in this section shall be construed to require a successor district to employ any person.

(L. 1998 S.B. 781 § 168.231)

*Word "a" appears in original rolls.

Section 168.271. Probationary period for employees--discharge during (metropolitan districts).

168.271. The first year of employment of all employees covered by sections 168.251 to 168.291 shall be deemed a period of probation. During the probationary period, any probationary employee whose work is found to be unsatisfactory shall be furnished a written statement by the administrative officer of the department in which he is employed, setting forth the nature of his unsatisfactory work or incompetency and a copy of the statement shall be filed with the personnel director. If improvement satisfactory to the administrative officer of the department is not made within one month after the receipt of the statement, the probationary employee shall be discharged.

(L. 1963 p. 200 § 9-27)

(Source: L. 1961 p. 354 § 4)

Section 168.281. Permanent employees, removal, procedure--suspension, demotion--reduction of personnel (metropolitan districts).

168.281. 1. After completion of satisfactory probationary service, appointments of employees shall become permanent subject to removal for any one or more causes herein described as

well as to the right of the board to terminate services of all who attain the age of compulsory retirement fixed by the retirement system.

2. (1) No employee whose appointment has become permanent may be removed, aside from compulsory retirement, except for one or more of the following causes: immorality, felony conviction of a crime under any state or federal criminal statute, inefficiency or incompetency in line of duty, violation of the published regulations of the school district, violation of the laws of Missouri governing the public schools of the state, or that his physical or mental condition is such that it incapacitates him from properly performing his duties or from properly associating with children, and then only after the personnel director has given written notice to the employee by registered mail with return receipt of his suspension and proposed discharge. The registered letter is to notify the employee:

(a) Of the charges on which the suspension and proposed discharge is based;

(b) Of the date, time, and place of the hearing of the charges by the personnel committee;

(c) Of the employee's right to be present at the hearing and to have counsel or other representative of his choice;

(d) Of his right to testify and to offer testimony of witnesses as well as other evidence sustaining his defense, and to cross-examine adverse witnesses and to generally conduct a defense;

(e) And of the necessity, in order for him to avail himself of the aforesaid opportunity to defend himself against the charges, that he notify the personnel director in writing, at least three days before the date of the hearing, of his intention to offer the defense.

(2) The hearing of the committee is to be held not less than ten nor more than fifteen days after the mailing date of the notice of hearing to the employee, except by mutual agreement of the committee and the employee. Failure of the employee to give the three days' notice in writing of his election to defend, or having given the notice, failure of the employee to appear at the hearing, shall each be considered by the committee as an admission of the truth of the charges and the committee may rule accordingly. The committee may, in its discretion, to avoid undue hardship, and upon a sufficient showing by the employee of valid and cogent reasons for his failure to notify the committee of his election to defend, or of his subsequent failure to appear at the hearing, reset the hearing in the same manner as before.

(3) Upon conducting the hearing of the charges, or if no defense is offered, upon considering the charges, the personnel committee by majority vote shall make its decision as soon as practicable and shall immediately thereafter notify the employee of its decision by registered mail. The committee may rule

(a) That the employee's suspension was justified and that he is discharged with loss of pay as of the date of his suspension;

(b) That the suspension was unjustified and no grounds calling for his discharge have been proven and that the employee shall immediately be restored to his former position without any loss of pay;

(c) That the proven charges are of such a nature that they can be removed or remedied by transferring the employee to a different position, grade, classification, school or building in which case the employee shall lose no pay during his suspension prior to the committee's decision;

(d) Or the committee may make any ruling, less severe than that of discharge, which the committee may deem meet and just under the circumstances including suspension with the loss of pay. The decision of the personnel committee shall be final; provided, however, that upon the request of the employee affected the board shall review the record of the proceedings before the personnel committee and may, in its discretion, grant the employee a hearing before the board. Upon hearing the board may affirm, rescind or modify the decision of the committee and make any other orders in connection therewith that are appropriate under the circumstances.

3. No employee whose appointment has become permanent shall be suspended without pay, nor be demoted nor shall his salary be reduced unless the same procedure is followed as herein stated for the removal of the employee because of inefficiency in line of duty, and any employee whose salary is reduced or who is demoted may waive the presentment of charges against him and a hearing thereon by the committee. Nothing herein shall in any way restrict or limit the powers of the board of education to make reductions in the number of employees because of insufficient funds or decrease in pupil enrollment or lack of work.

(L. 1963 p. 200 § 9-28, A.L. 2005 S.B. 287)

(Source: L. 1961 p. 354 §§ 5, 6, 7)

Effective 7-01-06

(2000) Certified school guidance counselor has no right to a hearing pursuant to this section. Cross v. Hammonds, 223 F.3d 867 (8th Cir.).